

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Petition of the Association for Local)
Telecommunications Services (ALTS) for a)
Declaratory Ruling Establishing Conditions)
Necessary to Promote Deployment of)
Advanced Telecommunications Capability)
Under Section 706 of the Telecommunications)
Act of 1996)

CC Docket No. 98-78

To: The Commission

COMMENTS OF BELL SOUTH

BellSouth Corporation, on behalf of itself and its subsidiaries, ("BellSouth") hereby files these comments in opposition to the *Petition Of The Association For Local Telecommunications Services* ("ALTS") *For A Declaratory Ruling* ("Petition"). For the reasons stated below, the Commission should deny the Petition.

I. Introduction

The Petition transparently attempts to circumvent the Commission's procedures and the requirements of the Telecommunications Act of 1996 ("1996 Act").¹ The issues raised by ALTS either are the subjects of proceedings pending before the Commission or State commissions or are matters that should be handled through the negotiation and arbitration procedures of Section 252 of the 1996 Act.² Moreover, the Petition misrepresents important facts.

II. The Petition Misrepresents The Facts.

The Petition spins a twisted tale from beginning to end. It starts with the outrageous claim that competitive local exchange carriers ("CLECs") have single-handedly brought

¹ Pub. L. 104-104.

² 47 U.S.C. § 252.

advanced capabilities to local telecommunications networks thereby forcing reluctant incumbent local exchange carriers ("ILECs") to catch up. It follows its distorted view of telecommunications history with equally distorted accounts of ILECs' attempts to comply with the 1996 Act.

A. The Petition Grossly Overstates The Role Of CLECs In Innovation.

The Petition credits CLECs with virtually all innovation and deployment of advanced capabilities in the local telecommunications business in the last decade. BellSouth does not deny that many CLECs, unconstrained by government-prescribed depreciation rates, limits on earnings, or sunk investment and unencumbered by any duty to serve unprofitable customers, are deploying the latest technology as they enter the most profitable local telecommunications markets. The CLECs are not, however, the pioneers of innovation that the Petition claims. (Indeed, much of the relief that the Petition seeks implies that CLECs would rather piggyback on the innovation of ILECs than risk their own capital.³)

Each year for many years, BellSouth has invested billions of dollars to modernize its network. BellSouth's recent capital investment in its network is illustrative. In 1997, BellSouth invested almost \$4 billion in its network and is doing the same in 1998. BellSouth has deployed a total of 30 ATM switches and plans to deploy an additional 24 over the next 18 months. BellSouth has also deployed 164 frame relay switches and deploys an additional five every month. BellSouth has built and put into service more than 7,785 SONET rings and has deployed full Internet service platforms in 40 cities.

³ BellSouth is, in fact, pursuing a wholesale strategy to meet the needs of CLECs. BellSouth has no objection to selling its network capabilities to its competitors, provided it is permitted to charge prices that reflect its true costs and a reasonable profit. Such a price would compensate BellSouth for assuming the investment risk associated with innovation and would reflect the value to CLECs of avoiding that investment risk.

At the end of 1997, 93.6% of BellSouth's central offices were digital, 100% of its lines were equipped for Signaling System 7, and 89.8% of its lines had access to ISDN. At that time, BellSouth had 60,181 total fiber miles in service and had provisioned 99.2% of its interoffice circuits and 55.1% of its feeder routes on fiber.

Finally, BellSouth has recently announced its initial rollout of ADSL and plans to bring service to 30 cities by the end of 1999. Contrary to the Petition's assertion, BellSouth deployment of ADSL is not a response to CLEC competition. It is a response to market demand for higher speed access to the Internet and other data networks.

These statistics are not the result of a sudden conversion to belief in network modernization instigated by competition from CLECs, as the Petition asserts. The current level of deployment of advanced technologies in BellSouth's network is the result of BellSouth's longstanding commitment to providing the communities and customers it serves with high quality telecommunications services that meet their needs and its corresponding commitment to investing in opportunities to grow its business.

B. The Petition Distorts The Truth About ILECs' Attempts To Comply With The 1996 Act.

The Petition appears to be urging the Commission to use the carrot of regulatory forbearance as a stick to force ILECs to conform to ALTS's view of how ILECs should be implementing the 1996 Act. This goal may be inferred from the Petition's heavy emphasis on matters unrelated to regulatory forbearance or other regulatory actions to encourage greater deployment of advanced telecommunications capabilities. More than half of the Petition deals with areas of disagreement between CLECs and ILECs with respect to ILECs' duties under the 1996 Act.

In some cases, the Petition faults ILECs for pursuing legal remedies for unlawful governmental action, such as certain aspects of the Commission's *Interconnection Order*,⁴ and for winning on issues like the pricing and recombination of unbundled network elements ("UNEs"). The Petition spuriously characterizes such legal challenges as delaying tactics, even though companies like BellSouth have proceeded apace with their implementation activities while the litigation has been pending. A close reading of the Petition reveals that the real sore point is that the ILECs have prevailed on some important issues. Being a successful appellant is not, however, immoral, unethical, or unpatriotic. To the contrary, the ILECs have used the appellate process to do no more than insure that the Commission interpret and apply the 1996 Act as Congress intended. The CLECs' quarrel is with Congress, not the ILECs.

Similarly, the Petition criticizes ILECs for refusing to make certain network capabilities available as UNEs without negotiated interconnection agreements covering those capabilities. For example, the petition criticizes BellSouth and SBC for refusing to provide unbundled loops with xDSL electronics without a negotiated agreement.⁵ In fact, the Petition implies that BellSouth has absolutely refused to provide unbundled loops with xDSL functionality.⁶ The truth is that the BellSouth testimony to which the Petition refers related to whether BellSouth's Tennessee Statement of Generally Available Terms ("SGAT") included unbundled loops with xDSL functionality, not whether BellSouth would, if a CLEC requested, be willing to negotiate in good faith for the provision of such loops. To date, no CLEC has requested that such loops be provided. No doubt the reason that there has been no such request is that BellSouth has not yet

⁴ Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, *Report and Order*, CC Docket No. 96-98, 11 FCC Rcd 15499 (1996).

⁵ Petition at 15-16.

⁶ Petition at 15.

deployed ADSL commercially.⁷ CLECs undoubtedly understand that they have no right to request as a UNE a network capability that does not exist.⁸

Finally, by an extensive listing of alleged deficiencies in the ILECs' implementation of the 1996 Act, the Petition suggests that the remedies for dealing with alleged ILEC failures are insufficient. The Petition then urges the Commission to withhold any regulatory forbearance to put additional pressure on ILECs to interconnect with CLECs' data networks, to provide data services for resale, to provide collocation on more favorable terms, and to offer UNEs that support data services. ALTS would apparently have the Commission withhold all forbearance no matter how well supported by the facts and public policy. The anecdotal information on which the Petition relies to support this position does not establish the need for additional remedies and certainly does not demonstrate that BellSouth has refused to negotiate in good faith to meet the requests of CLECs. To the contrary, BellSouth has diligently pursued negotiation and implementation of interconnection agreements in accordance with Section 251 of the 1996 Act.⁹ To date, BellSouth has negotiated more than 300 interconnection agreements. BellSouth as of April 30, 1998, has implemented about 225 collocation arrangements and has more than 300 additional arrangements in progress. In addition, BellSouth does negotiate interconnection with its data networks.

The Petition represents an attempt to bypass the remedies provided by the 1996 Act and to obtain untimely reconsideration of prior decisions of the Commission and State commissions on issues such as the terms of collocation. Notwithstanding the Petition's complaints, the truth is that the remedies are working. CLECs have routinely challenged ILECs' negotiating positions in

⁷ BellSouth's SGATs do offer xDSL-conditioned unbundled loops.

⁸ *Iowa Utilities Board, et al., v. FCC*, 120 F.3d 753, 812, 813 (Cir. 8 1997).

⁹ 47 U.S.C. § 251.

arbitration proceedings before State commissions and are also pressing their positions in Section 271 proceedings. The Petition provides ample evidence of CLECs' successes before State commissions, as well as State commissions' refusals to support BOCs' interLATA relief because of perceived deficiencies. Indeed, the Petition shows that CLECs have sometimes won from State commissions requirements that the Commission has declined to impose (*e.g.*, sub-loop unbundling). The 1996 Act's procedures and incentives for securing ILEC compliance with Section 251 are working. There is no practical need or legal justification for withholding justified forbearance to supplement the Act's remedies for securing compliance with the Act's requirements. Moreover, the Commission may not refuse justified regulatory forbearance to pressure ILECs to acquiesce to requirements not imposed by the Act, as the Petition sometimes suggests.

III. Regulatory Forbearance Will Promote Competition For Advanced Data Services.

BellSouth will not burden the Commission with repetition of the arguments in the pending forbearance proceedings,¹⁰ as the Petition has, but asks that the Commission incorporate the records of those proceedings into this docket. Neither will BellSouth attempt to argue the merits of forbearance petitions that have not yet been filed. BellSouth will, however, remind the Commission of its longstanding policy favoring deregulation of existing competitive services and of new services with competitive potential. The Commission recently summarized that policy as follows:

¹⁰ Petition of Bell Atlantic Corporation for Relief from Barriers To Deployment of Advanced Telecommunications Services (CC Docket No. 98-11); Petition of US West Communications for Relief from Barriers To Deployment of Advanced Telecommunications Services (CC Docket No. 98-26); Petition of Ameritech Corporation for Relief from Barriers To Deployment of Advanced Telecommunications Services (CC Docket No. 98-32); Alliance for Public Technology Request for Notice of Inquiry and Notice of Proposed Rulemaking To Implement Section 706 of the 1996 Telecommunications Act (File No. CCB/CPD 98-15).

The Internet and other enhanced services have been able to grow rapidly in part because the Commission concluded that enhanced service providers were not common carriers within the meaning of the Act. This policy of distinguishing competitive technologies from regulated services not yet subject to full competition remains viable.... As an empirical matter, the level of competition, innovation, investment, and growth in the enhanced services industry over the past two decades provides a strong endorsement for such an approach.¹¹

While the foregoing quote relates to the distinction between enhanced services and telecommunication services, the principles enunciated are relevant also to the distinction between competitive advanced telecommunications services, such as packet switching services and ADSL, and perceived bottleneck capabilities, such as unbundled loops. Services such as packet switching and xDSL are as ripe for regulatory forbearance, and even deregulation, as enhanced services were 20 years ago.

This preference for competition over regulation is also present in the 1996 Act. Section 10 directs the Commission to forbear from applying any regulation or any provision of the Telecommunications Act that is not necessary to protect consumers. Congress specifically recognizes that forbearance may promote competition and instructs the Commission to consider the promotion of competition in determining whether forbearance is in the public interest.¹²

In Section 706, Congress further directs the Commission and State commissions to use forbearance from regulation to encourage the deployment of advanced telecommunications services to all Americans. Section 706 likewise states a strong public policy favoring deployment of new technologies and services.¹³ Clearly Congress, like the Commission, recognizes that regulatory forbearance, not more intense regulation, is often the road to greater

¹¹ Federal-State Joint Board on Universal Service (CC Docket No. 96-45), Report to Congress (FCC 98-67), ¶95.

¹² 47 U.S.C. § 10(a)-(b).

¹³ 47 U.S.C. § 157.

competition. The Commission must not arbitrarily decide to withhold such forbearance when compelling evidence is presented that forbearance is justified. Congress gave the Commission the discretion to forbear where such forbearance promotes competition or the deployment of advanced capabilities. The Commission may not accept ALTS's invitation to use the denial of forbearance as a stick to extort ILEC submission to requirements that are not authorized by the 1996 Act.

The Commission will not have to look far to find compelling evidence that packet switched services are intensely competitive, that the ILECs' competitors are not dependent on ILECs' packet services, and that the competitors with the bulk of the market are already subject to substantial regulatory forbearance. Under such circumstances, the Commission should not find it difficult to grant the same forbearance for ILECs' provision of those services.

The market for high-speed data connection services, like xDSL and cable modem services, is nascent, but clearly has the potential to become intensely competitive. The Commission should, as urged in the pending forbearance petitions, find a way to get these new services off to a competitive start and should not let them become bogged down in the morass of regulation as usual. BellSouth wholeheartedly endorses one statement in the Petition: "Heated competition in the data market holds the most promise for accelerating the deployment of advanced data services, and...the Commission can best 'encourage' the deployment of advanced data services by doing all it can to facilitate such open and unbridled competition."¹⁴ Forbearance from regulation, not intensification of regulation, will produce such "heated competition." There is no justification for imposing traditional common carrier regulation on any provider of xDSL services, where no provider dominates the market.

¹⁴ Petition at 3.

BellSouth understands, of course, that CLECs will need certain loop facilities of ILECs and that, if ILECs provide xDSL over loops that exceed the limits of xDSL or that contain fiber feeder, they will need to accommodate CLEC provision of xDSL services over such facilities. The Commission should not, however, prejudge the manner in which such unbundled loops must be provided, but should permit CLECs and ILECs to negotiate suitable arrangements.

The Commission certainly should not prescribe the methods of interconnection set forth in Attachment A to the Petition. The description in Attachment A is technically imprecise and ignores significant complexities¹⁵ that can be handled effectively in negotiation, but not in rulemaking. Moreover, xDSL technology, like other digital technology, is evolving more rapidly than regulation at the technical level can anticipate.

IV. Conclusion

BellSouth, therefore, urges the Commission to deny the relief requested in the Petition and to proceed with the issuance of a Notice of Inquiry or a Notice of Proposed Rulemaking, as urged by Petition of the Alliance for Public Technology. In such a proceeding, the Commission can consider fully the opportunities for encouraging deployment of advanced telecommunications capabilities and greater competition through regulatory forbearance. The

¹⁵ For example, Appendix A (at page 3) appears to insist that xDSL functionality be provided one loop at a time as CLECs purchase unbundled loops, while also insisting that ILECs provide access to such functionality at a “digital cross-connection point” between the DSLAM and the ILEC’s packet switch. This position ignores an important aspect of current xDSL architecture, *viz.*, that the data stream between the DSLAM and the packet switch contains data between many xDSL end users and many data networks. The messages in that data stream are segregated and directed to their respective destinations by the packet switch. If CLECs are to obtain discrete access to the data streams of specific end users, they must do so at the packet switch. At that point, however, they would be interconnecting with a complete xDSL service assembled entirely by the ILEC, which ILECs are not required to provide at UNE rates. *Iowa Utilities Board, et al., v. FCC*, 120 F.3d 753, 813, 814 (Cir. 8 1997). Effective unbundling of xDSL functionality at the point specified in Appendix A will require unbundling at a level that includes an entire DSLAM or a separable portion of a DSLAM. Although BellSouth has not yet deployed xDSL commercially, BellSouth stands ready to engage in such negotiations in a manner consistent with its deployment plans. To date, no CLEC has requested such negotiations.

intensified regulation of ILECs advocated by the Petition would not serve these goals, but would further handicap those companies that are best positioned to contribute to intensified competition and greater investment in the provision of advanced telecommunications capabilities to all Americans.

Forbearance of unnecessary regulation is not, however, the only action that the Commission needs to take to promote vigorous competition and deployment of advanced capabilities. Until the Commission permits BellSouth and other BOCs to provide in-region interLATA services, those companies will be not be able to compete fully with the providers that dominate data services markets and will have significantly less incentive to invest in advanced capabilities. The Commission must also move expeditiously in its review of the *Computer III* rules, which today impose significant delays in the introduction of new network capabilities for data services. BellSouth urges the Commission to move quickly on all fronts to remove regulatory barriers to "heated competition" and technology deployment.

Respectfully submitted,

BELLSOUTH CORPORATION
By its Attorneys:

A handwritten signature in dark ink, appearing to read "M. Robert Sutherland", is written over a horizontal line.

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Date: June 18, 1998

CERTIFICATE OF SERVICE

I hereby certify that I have this 18th day of June 1998, serviced all parties to this action with the foregoing *COMMENTS*, reference CC Docket No. 98-78, by hand service or by placing a true and correct copy of the same in the United States Mail, postage prepaid, addressed to the parties as set forth on the attached service list.


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